

Appeal from decision of the Colorado State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer C 38091.

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings

Pursuant to 43 CFR 3112.6-1(b) the power of attorney authorizing an attorney-in-fact to sign lease offers submitted under the simultaneous filing procedures must prohibit the attorney-in-fact from filing offers on behalf of any other offeror, and where the power of attorney fails to include such a prohibition, the offer is properly rejected.

APPEARANCES: George B. McPhillips, Esq., Mineola, New York, for appellant.
OPINION BY ADMINISTRATIVE JUDGE HARRIS

SATELLITE 8305128 (SATELLITE) received first priority for parcel CO 325 in the May 1983 simultaneous oil and gas lease drawing. In accordance with 43 CFR 3112.6-1(a) on February 2, 1984, the Colorado State Office, Bureau of Land Management (BLM), transmitted the lease offer documents and request for rental to SATELLITE. In the transmittal letter BLM specifically stated:

If the lease is signed (or the payment made) by an attorney-in-fact, the regulations require that the power of attorney contain particular provisions and that a copy of the power of attorney accompany the offer or payment 43 CFR 3112.6-1. If the offer is to be signed or payment made by an attorney-in-fact, we suggest you contact this office to insure compliance with the regulations and avoid unnecessary technical rejection of the application or offer. (Telephone No. (303) 837-5551).

SATELLITE returned the offer forms and payment. The offer forms were signed by an attorney-in-fact.

On April 3, 1984, BLM rejected the lease offer stating:

43 CFR 3112.6-1(b)(1)(i) (as found at 48 F.R. 33680, July 22, 1983) states:

An attorney-in-fact may sign the lease offer and pay the first year's rental only if: (i) the power of attorney prohibits the attorney-in-fact from filing offers on behalf of any other participant.

The copy of the Power of Attorney attached to the Offer to Lease does not indicate that the attorney-in-fact is prohibited from filing offers for other participants.

The power of attorney accompanying the offer to lease provided that one Gene Siering appointed Terence R. Corwin to act in his name on behalf of Siering's equity interest partners "a certain association known as SATELLITE 8305128." 1/

On appeal SATELLITE argues that the regulations cited by BLM should not apply to it because its application was filed for the May 1983 drawing and the regulations did not become effective until July 1983. It further states that Corwin is attorney-in-fact for no other association or entity involving CO 325 and represents no other individual or entity involving that filing. SATELLITE invokes Conway v. Watt, 717 F.2d 512 (10th Cir. 1984), and argues that if BLM had any concern about the qualifications of the attorney-in-fact, it should have requested that information.

Appellant's argument concerning the applicability of the regulations is inapposite. The system of simultaneous oil and gas leasing involves the submission of oil and gas lease applications which are considered to be filed simultaneously. The priority applicant is selected by a drawing. The selected applicant, if qualified, is forwarded the lease agreement by BLM, together with a request for payment of the first year's rental. Signing of the lease agreement and submission of the rental constitutes the applicant's offer to lease. 43 CFR Subpart 3112.

The controversy in this case surrounds the signing of the lease offer in February 1984, not the filing of the application for the May 1983 drawing. Thus, the July 1983 regulations cited by BLM are clearly applicable to this case. 2/

1/ We note that the power of attorney is dated Mar. 1, 1984. The offer to lease is signed by one T. R. Corwin, "nominee -- as attorney-in-fact," and dated Feb. 9, 1984, prior to the effective date of the power of attorney. Thus, at the time of signing, Corwin was not yet empowered to act in Siering's name.

2/ In any event the precursor of 43 CFR 3112.6-1(b) was 43 CFR 3112.4-1(b) (1982) which contained the requirement for the same prohibition.

[1] Where an attorney-in-fact signs a lease offer submitted pursuant to the simultaneous filing procedures, the regulation at 43 CFR 3112.6-1(b) provides that the power of attorney must prohibit "the attorney-in-fact from filing offers on behalf of any other participant." The Board has held that an offer is properly rejected where the power of attorney fails to include such a prohibition. Amy Polak, 79 IBLA 391, 392 (1984); Kirk Rhone, 76 IBLA 332 (1983). 3/

Appellant states on appeal that the attorney-in-fact represented no others in the drawing. However, the regulation requires the power of attorney to contain the prohibition, and BLM is not required to ascertain from the attorney-in-fact any required information which has not been disclosed in the power of attorney. Conway v. Watt, supra, in which the court found the failure to date a simultaneous oil and gas lease application to be a nonsubstantive defect, is not applicable to this case.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

R. W. Mullen
Administrative Judge

3/ The rationale for the prohibition requirement is set forth in the Polak and Rhone decisions.

